Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

October Term, 1998

Maria V. Carmona,
Petitioner

v.

Department of the Treasury,
Respondent

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

Maria V. Carmona
Petitioner
P.O. Box 454
Fulton, Maryland 20759
(301) 490-4328

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1. Is it in violation of my rights under the first amendment of the Constitution of the United States and derived law for senior federal officials to approve of and allow a member or members of one federally protected group of employees to direct, during an officially sanctioned federal meeting held during normal working hours in federal spaces, that I and fellow federal employees, who were of various ethnicities, and/or national origins, and/or religious beliefs, and who were invited to and who were in attendance during the said officially sanctioned federal meeting, stand and engage in prayer?

2. Is it in violation of my rights under the Constitution of the United States and derived law for senior federal officials to approve of and allow a member or members of one federally protected group of employees to direct, during an officially sanctioned federal meeting held during normal working hours within federal spaces, that I and fellow federal employees, who were of various ethnicities, and/or national origins, and/or religious beliefs, and who were invited to and who were in attendance during the said officially sanctioned federal meeting, stand and sing the "Black National Anthem"?

3. Was I deprived of any Constitutionally-protected right when I was directed by my federal management to stand and pray and to stand and sing the "Black National Anthem"?

TABLE OF CONTENTS

Page

Questions Presented ..... (i)

Table of Contents..... (ii)

Table of Cited Authorities ..... (iii)

Opinions Below 1

Jurisdiction 1

Constitutional Provisions, Statutes, and Administrative Regulations Involved..... 1

Statement of the Case 2

Conclusion 10

Appendix

Decision of the United States Court of Appeals for the Federal Circuit 1a

Petitions, Orders, and Decisions..... 2a

Request for Opinion of Office of Inspector General Legal Counsel 4a

TABLE OF CITED AUTHORITIES

Pages

Statutes:

Constitution of the United States
First Amendment 1, 2, 10

OPINIONS BELOW

The United States Court of Appeals for the Federal Circuit (Ref. Docket No. 98-3171) affirmed a Merit Systems Protection Board denial of a Petition for Review of an initial decision (Ref. Merit Systems Protection Board Docket Number DC-1221-97-0689-W-1) dismissing an Individual Right of Action appeal of an Office of Special Counsel determination (Ref. Office of Special Counsel File No. MA-96-1827) to close its investigation into allegations of retaliation for raising issues regarding direct violations of law, gross mismanagement, and abuse of authority on the part of Department of the Treasury management to include those situations as stated in the Questions Presented for review.

JURISDICTION

The final judgment of the United States Court of Appeals for the Federal Circuit was entered on August 5, 1998.

The jurisdiction of the Supreme Court to review this decision is conferred by Title 28, United States Code, Section 2101.

CONSTITUTIONAL PROVISIONS, STATUTES, AND ADMINISTRATIVE REGULATIONS INVOLVED

The First Amendment of the Constitution of the United States provides as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

The Merit Systems Protection Board advised of the right to take this case to the United States Court of Appeals for the Federal Circuit, wherein a final judgment was entered on August 5, 1998.

During 1994, senior Department of the Treasury federal officials approved of and allowed members of one federally protected group of employees to singularly organize, conduct, and engage in several meetings, among themselves, with senior Department officials, and with me and fellow federal employees, during normal working hours and within federal spaces.

Under the circumstances presented below, I felt forced and compelled to participate, and viewed my active participation in the direction given to me, as stated in my Questions Presented for review before the Supreme Court, as clearly expected of me and as a condition of my continuing employment.

I believe that the direction given to me by my management violated my constitutional rights, in part, under the first amendment of the Constitution of the United States, and specifically under the Establishment Clause.

On February 17, 1994, during an officially sanctioned federal meeting held during normal working hours in federal spaces, I and other federal employees who worked for the Department of the Treasury Office of Inspector General were directed to stand and pray and to stand and sing the "Black National Anthem" by Department of the Treasury Office of Inspector General management.

Senior Department of the Treasury officials, including Deputy Inspector General Robert Cesca and Office of Inspector General Counsel Francine Kerner, approved the agenda prior to the meeting. Senior Department of the Treasury officials were present at the meeting and actively participated in these activities.

I and the other federal employees who had been invited to attend, and who attended, this official function as approved by senior management were of various ethnicities, and/or national origins, and/or religious beliefs.

It was my understanding prior to the meeting that my participation in this event was expected of me and other federal employees by statements that were made and actions that were taken by Department of the Treasury senior management prior to the meeting that encouraged attendance, such as senior management's approval of a budget for the meeting and of the official time and place for the meeting, senior management's approval of the agenda, and senior management's planned attendance at this meeting.

It was my clear understanding prior to the meeting that I was expected to attend this meeting by the actions of senior management. I felt at the time that it would not be in my best career interest not to attend. In this manner, I felt that my attendance at this meeting was made a condition of my continuing employment.

At no time prior to the meeting was I made aware of the topics to be covered at the meeting or of the agenda for the meeting. At no time prior to, or during, the meeting was I notified that my participation in prayer and/or in singing the "Black National Anthem" would be directed of me by my

management, or that participation in these activities was voluntary for me.

The master of ceremonies, Chester White, and the opening speaker at the meeting, Grace Sutton, were management officials at the grade 15 and grade 14 levels, respectively. These two individuals and other members of the federally protected group who were present at the meeting proceeded to exhibit through their actions and statements an extremely overt militant and derogatory attitude toward Department of the Treasury management and established a threatening environment during the meeting that was to carry over into the workplace for months following the meeting.

In addition, the master of ceremonies and the opening speaker were criminal investigators within the Department of the Treasury Office of Inspector General and as such were authorized to carry weapons. This fact and their displayed sentiments and inflammatory statements made denouncing Department of the Treasury management created a very threatening, intimidating, and hostile environment during the meeting.

I personally found the environment established at this meeting to be very threatening, intimidating, and hostile, and I felt forced and compelled to stand and pray and to stand and sing the "Black National Anthem" when directed to do so by the lead participants, even though I did not think it was right and did not want to participate.

On March 15, 1994, there was an officially sanctioned federal meeting held to address the concerns of members of the same federally protected group, to the exclusion of the concerns of all other Office of Inspector General employees. The meeting

was run by a Focus Group of five members of this federally protected group, under the leadership of the master of ceremonies of the February meeting.

I attended this meeting because it was initially presented as a meeting scheduled for all Office of Inspector General employees to express their concerns. However, at the start of the meeting it was announced by the individual who had been the master of ceremonies of the February meeting and who was also running the March meeting, that the purpose of the meeting was to address issues regarding only members of one federally protected group, and that all other Office of Inspector General employees would have to "fend for themselves."

Following this meeting, members of the Focus Group had numerous meetings with Department of the Treasury senior management, including the highest-ranking official in the Department who was a member of their federally protected group, with whom they met with the Secretary of the Treasury's approval.

Following these meetings, it was made clear to me that I was expected, in the words of my senior manager, Gary Whittington, to make members of this federally protected group "happy." Also, following these meetings, charges and accusations, some unfounded, were made by members of this protected group against their supervisors and management.

In one case, I was told that certain accusations made were not really against me and that, in making these accusations, the person was just going along with her group. I had found out that unfounded and frivolous statements were being made about me to my supervisor by this person. The person who

made these unfounded and frivolous claims told me that she just needed to go along with her group, but that I was not supposed to find out that this was being done. She admitted to me in private that she had no basis for the claims she had made against me.

Also, the master of ceremonies of the February and March meetings accused me in writing of "thwarting" his career after I raised my concerns regarding actions taken by him and others during these meetings to my management.

I found the types of actions being taken by members of this federally protected group to be extremely hostile, and felt that they had created a very unhealthy and hostile work environment.

It also concerned me that their actions were having a severe and extremely negative impact on the overall productivity of the Office of Inspector General and had done so for several months.

It also concerned me that senior management was not intervening to address this hostile and counter-productive work environment and was, in fact, supporting the actions being taken.

Management approval of these events was further evidenced by actions such as the promotion, within a short period of time, of the master of ceremonies of the February meeting to Deputy Assistant Inspector General for Investigations, and of the opening speaker of the February meeting to the Grade 15 Regional Inspector General for Investigations. There were also statements made by senior management of the need, and

plans, to "accommodate" at least one other member of the Focus Group with a promotion.

Other members of the protected group continued to criticize management at various levels, with no basis in certain cases and with the explanation that they just needed to go along with their group, seemingly with no intervention from senior management.

Employees who expressed concern regarding these activities, including me, were met with immediate, severe, and harsh retaliation by Department of the Treasury management.

As stated earlier, at no time was I notified that I did not have to participate; i.e., no one stated that it was a voluntary act on my part to stand and pray or to stand and sing the "Black National Anthem" when directed to do so by my management.

It was clear to me that senior Department of the Treasury management condoned these activities by their approval of these meetings and their agendas, by their presence at these meetings, by their active participation, and by the subsequent promotion of the key individuals involved to senior management levels.

Initially, feeling increasingly threatened and uncomfortable with the situation, I addressed my concerns regarding these events to senior management within the Office of Inspector General. I then sent a memorandum to the Legal Counsel and Ethics Officer of the Office of Inspector General requesting an opinion on the legality and on the ethical implications of the events that occurred at the February and March 1994 meetings. Because the matters were not addressed, I subsequently notified senior Department of the Treasury

management, first Secretary Lloyd Bentsen in September 1994, and then newly-appointed Secretary Robert E. Rubin and Inspector General Valerie Lau in early 1995, of my concerns.

On July 19, 1996, due to the severe retaliation I was experiencing and the negative decisions that were being made by management regarding my career; decisions which I felt were directly related and attributed to the raising of my concerns regarding the actions taken at these meetings and the deterioration of the work environment; I raised my concerns regarding issues that I honestly believed evidenced direct violations of law, gross mismanagement, and abuse of authority on the part of Department of the Treasury management to the United States Office of Special Counsel (Ref. Office of Special Counsel File No. MA-96-1827).

On March 21, 1997, the Office of Special Counsel made a preliminary determination not to seek a stay and to close its investigation into this matter. This was not a decision made based on the merits of my concerns.

On April 7, 1997, I timely filed an appeal with the Office of Special Counsel of its preliminary determination. On April 21, 1997, the Office of Special Counsel denied my appeal and closed its file. This was not a decision made based on the merits of my concerns.

On June 25, 1997, I timely filed an Individual Right of Action appeal with the Merit Systems Protection Board (Ref. Merit Systems Protection Board Docket Number DC-1221-97-0689-W-1) on appeal of the final decision of the Office of Special Counsel. On September 26, 1997, the Merit Systems Protection Board issued its initial decision

dismissing my appeal. This was not a decision made based on the merits of my concerns.

On October 31, 1997, I timely filed a Petition for Review with the Merit Systems Protection Board. On January 29, 1998, the Merit Systems Protection Board denied my Petition for Review. This was not a decision made based on the merits of my concerns.

On February 27, 1998, I timely filed a Petition for Review with the United States Court of Appeals for the Federal Circuit (Ref. United States Court of Appeals for the Federal Circuit Docket No. 98-3171) to review the final decision of the Merit Systems Protection Board. On August 5, 1998, the United States Court of Appeals for the Federal Circuit affirmed the Merit Systems Protection Board's position. This was not a decision made based on the merits of my concerns.

None of the management officials that I have contacted, or the proper administrative organizations to which I have appealed or petitioned for review, made decisions based on the merits of my concerns in dismissing my concerns, appeals, and/or petitions.

The retaliation that I have suffered for raising my concerns has continued throughout my appeals and petitions, to the point where my reputation and my career have been irrevocably ruined.

I have been a loyal and hardworking federal employee for over twenty-two years and have always taken pride in my work and the workplace. I had received the highest of ratings and numerous awards during my career prior to the point of raising my concerns in 1994.

I do not believe that I, or other federal employees, should be forced, coerced, or directed by federal management in any manner to stand and engage in prayer or directed to stand and sing the "Black National Anthem" in the federal workplace; or be made in any manner to believe or feel that these activities are expected or a condition of continuing employment.

I believe that being directed to stand and pray and to stand and sing the "Black National Anthem" by my federal management violated my rights under the Constitution of the United States and that I have been illegally retaliated against for raising my concerns.

Because the above-mentioned administrative organizations, and most recently the United States Court of Appeals for the Federal Circuit, made decisions that were not based on the merits of my concerns, I am respectfully requesting that the United States Supreme Court address and consider the merits, and the constitutionality, of my concerns.

CONCLUSION

For the above reasons, I consider the merits of the situations and concerns as presented herein to be precedent-setting in nature and that the instant Petition for Writ of Certiorari should be granted by the Supreme Court for compelling reasons due to the merits of these concerns and to the Opinions Below having all been decided not based on the merits.

Respectfully submitted,

Maria V. Carmona
Petitioner

APPENDIX

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

98-3171

MARIA V. CARMONA

v.

DEPARTMENT OF THE TREASURY

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
AUG 5 1998
JAN HORBALY
CLERK

JUDGMENT

ON APPEAL from the Merit Systems Protection Board

In CASE NO(S). DC122197689-W-1

This CAUSE having been heard and considered, it is ORDERED and ADJUDGED:

Per Curiam (MICHEL, Circuit Judge, PLAGER Circuit Judge, and CLEVENGER, Circuit Judge):

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

DATED: AUG 05 1998 S/_____
JAN HORBALY/CLERK

ISSUED AS A MANDATE: SEPTEMBER 28, 1998

PETITIONS, ORDERS, AND DECISIONS

United States Court of Appeals for the Federal Circuit
Docket No. 98-3171

August 5, 1998
Affirmation of the Merit Systems Protection Board position.

February 27, 1998
Petition for Review of the final decision of the Merit Systems Protection Board.

Merit Systems Protection Board
Docket No. DC-1221-97-0689-W-1

January 29, 1998
Order denying petition for review of the initial decision issued on September 26, 1997.

October 31, 1997
Petition for Review by the Board.

September 26, 1997
Initial Decision dismissing an appeal regarding denial of an Individual Right of Action appeal.

August 6, 1997
Order to Show Cause (jurisdiction).

June 25, 1997
Individual Right of Action appeal of the final decision of the Office of Special Counsel.

Office of Special Counsel
File No. MA-96-1827

April 21, 1997
Denial of appeal. Closed file.

April 7, 1997
Appeal of preliminary determination.

March 21, 1997
Preliminary determination not to seek a stay and to close the investigation into this matter.

July 19, 1996
Initial filing regarding severe retaliation directly related and attributed to the raising of concerns regarding the actions taken at the two Office of Inspector General meetings and the deterioration of the work environment.

INTEROFFICE MEMORANDUM

Date: 22-Aug-1994 09:06am EST
From: Maria Carmona
CARMONA
Dept: Oversight (OQA)
Tel No: (202) 273-3030

TO: Francine Kerner (KERNER)

Subject: Request for Opinion

I request your opinion, as Legal Counsel and Ethics Officer of the OIG, on the legality and on the ethical implications of the events that occurred at the OIG African American History Month celebration on February 17, 1994, and at the OIG All-Employee Forum on March 15, 1994. Specific issues to be addressed include:

1. Requesting that attendees stand and participate in praying and in singing the "Black National Anthem" at an officially-sanctioned Federal Government meeting, which occurred on February 17, and

2. Holding an officially-sanctioned Federal Government meeting to address the concerns of one minority group to the exclusion of all other OIG employees, which occurred on March 15.